

NOV 15 2018

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Before: STEWART, Chief Judge, OWEN, JONES, SMITH, DENNIS, ELROD, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, N. BROWN, DICK, HICKS, D. BROWN, OZERDEN, LYNN, ROSENTHAL, GILSTRAP, and MARTINEZ

COMPLAINT NOS. 05-18-90049 through 05-18-90051

IN RE: Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002

ORDER AND MEMORANDUM OF REASONS

Complainant, a former employee of a United States Bankruptcy Court, filed a complaint of judicial misconduct, including two amendments/supplements, in 2018 against three United States Bankruptcy Judges. A Special Committee was appointed pursuant to 28 U.S.C. § 353 to conduct an investigation of the complaint.

Complainant's allegations generally fall into three categories: (1) the "all male" Subject Judges "covered up" the "sexual misconduct" of a former court supervisor with two "direct supervisory subordinates"; (2) the Subject Judges authorized complainant's termination, citing as a pretense the falsification of time records when their real reason was discriminatory and/or retaliatory; and (3) the Subject Judges violated complainant's due process rights in the processing of his EDR Complaint.

Complainant also filed a new EDR claim, alleging that the chief bankruptcy judge and other bankruptcy court employees willfully failed to advise complainant of the addition of a whistleblower provision to the court's EDR Plan in 2012, resulting in a violation of complainant's rights. Complainant also alleged that one of the court employees "willfully obstruct[ed] justice due to her nonfeasance to provide access to a requested public record," namely a court order implementing the 2012 revision to the Plan. The bankruptcy court forwarded this EDR claim to the Fifth Circuit for handling pursuant to the Plan's provisions. Chief Judge Stewart abated the EDR claim pending the resolution of the judicial misconduct complaint.

With the assistance of retained outside counsel, the Special Committee has concluded a thorough investigation, including the review of over 500 pages of documents and

interviews of sixteen witnesses, including complainant and the Subject Judges. The investigation of the misconduct complaint necessarily also addressed the allegations raised in the EDR claim.

The Special Committee found no evidence to support complainant's allegations that the Subject Judges condoned or covered up sexual misconduct; that complainant was terminated for any reason other than falsification of his time records; or that complainant's rights under the EDR Plan were violated. The Special Committee also found no evidence to support complainant's contention that the whistleblower provision added to the 2012 EDR Plan would have applied to complainant and his EDR claims.

Likewise, the Special Committee found no evidence to support complainant's current EDR claims that the chief bankruptcy judge and other court employees "fraudulently concealed" the addition of a whistleblower provision to the EDR Plan in 2012 to deny complainant his rights, or that a court employee is "willfully obstructing justice" by refusing to provide complainant with a 2012 order enacting the revised Plan with the whistleblower provision. Indeed, the Special Committee found that no 2012 order enacting the revised Plan exists.

Pursuant to its findings above, the Special Committee recommended that the Judicial Council dismiss the complaint. *See* 28 U.S.C. § 354(a)(1)(B) and Rules 20(b)(1)(A)(ii) and (iii) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The Judicial Council accepts this recommendation and dismisses the complaint pursuant to 28 U.S.C. § 354(a)(1)(B) and Rules 20(b)(1)(A)(ii) and (iii).

The Special Committee also recommended the dismissal of complainant's EDR complaint pursuant to 28 U.S.C. § 332(d)(1). The Judicial Council removes the EDR complaint from abatement, accepts this recommendation and dismisses the EDR complaint pursuant to 28 U.S.C. § 332(d)(1). There is no appeal from this dismissal.


Complainant requested a copy of the Special Committee's Report pursuant to Rule 16(a). The request is denied.

Pursuant to Rule 24(a)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, it is ordered that the names of the subject judges not be disclosed.

An order dismissing the complaint is entered simultaneously herewith.

For the Council:

Date: November 9, 2018


Carl E. Stewart
Carl E. Stewart,
Chief Judge